IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.499 OF 1994

Mr. Suresh B. Dhoot
having his office at
44, Great Western Bldg.
compound, N.M. Road
extension, Fort,
Bombay 400 023. ...Appellant.

V/s

1. Mr. Peter F. Gonsalves
partner of M/s Swagat
Auto having his Petrol Pump
at N.M. 8 Bom/Ahm
Highway, Sativili Village,
Post-Valiv, Tal-Vasai,
Dist- Thane and residence
at House No. 344, village
Kholi, Chichoti, Post-Kaman,
Tal - Vasai, Dist: Thane.

2. State of Maharashtra ....Respondents.

None for the appellant.

Mr. D.P. Adsule, APP for the respondent No.2 - State.

CORAM: V.M.KANADE,J.
DATE: 22nd February, 2005

ORAL JUDGMENT:

1. None for the appellant. Heard Shri Adsule, the learned APP appearing on behalf of the respondent No.2 - State.

2. Appellant is the original complainant who had filed the complaint against the respondent - accused under section 138 of the Negotiable Instruments Act. The said complaint was dismissed by the Metropolitan Magistrate, 33rd Court at Ballard Pier, Bombay by Judgment and Order dated 04/01/1994. Being aggrieved by the said Judgment and Order, the appellant has preferred this appeal against acquittal against respondent No.1.

3. With the assistance of the learned APP appearing on behalf of the respondent No.2 - State, I have perused the judgment and order passed by the learned Metropolitan Magistrate and also the evidence brought on record.

4. Brief facts are that the complainant, in his complaint, had alleged that he had given an amount of Rs 30,000/- to the accused as he was badly in need of money for conducting his petrol pump business. After the complainant on several occasions requested the accused to repay the loan, the accused issued cheque on 01/06/1990. The complainant deposited this cheque in his Bank. However the said cheque was dishonoured with the remark "Refer to Drawer". According to the complainant, a statutory notice was served on the

accused. No reply was given to the said notice and, therefore, the complaint was filed under section 138 of the Negotiable Instruments Act.

5. The Trial Court acquitted the accused and one of the grounds on which he was acquitted was that the complainant had failed to prove that the said statutory notice as required under section 138 was served on the accused. I have perused the evidence of the complainant. The acknowledgement receipt which is produced by the complainant shows that on the said receipt there is a marking 'AAP'. The accused has specifically denied the receipt of the statutory notice. It was open for the complainant to have examined the Post-Master in the absence of signature of the accused on the registered acknowledgement. Further, it is an admitted position that no certificate has been obtained by the complainant from the postal department that notice dated 13/06/1990 was either served personally or through the post office. In my view, since there is no satisfactory evidence regarding service of notice, the provisions of section 138 of the Negotiable Instruments Act have not been fully complied with. The Trial Court, in my view, was justified in dismissing the complaint on this ground. I do not see any reason to interfere with the said

findings recorded by the Trial Court.

6. The appeal is accordingly dismissed.

(V.M. KANADE, J.)